Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Daucher	Analyst:	Jeff Garnier	Bill Number:	AB 928
Related Bills:	None	Telephone:	845-5322	Introduced Date:	February 23, 2001
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Live Near Your Work Program Grants

SUMMARY

This bill would:

- provide a 100% credit for amounts paid by an employer to a "live near your work" (LNYW) program, and
- create the LNYW program and fund under the Health and Safety Code.

PURPOSE OF THE BILL

The bill specifies that its purpose is to: stimulate homeownership in designated areas, promote public and private partnerships to strengthen communities, support state transportation policy by promoting shorter commuting times, and support employer compliance with the federal Clean Air Act Amendments of 1990.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2002.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to work with the author' s office to resolve the implementation considerations.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Board Position:			Department Director	Date
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Neither state nor federal laws have a credit that assists employees in purchasing or leasing a home near their work.

Existing state and federal laws allow an employer to deduct ordinary and necessary expenses in carrying on a trade or business, including compensation paid to an employee. Employee compensation can include the cost of moving an existing or future employee to a new location. Employer-paid moving expenses may include temporary living expenses and the closing costs of selling and buying a home. The employee generally includes the amounts paid by the employer as wage income on their tax return. Employees can then deduct the amount of direct moving expenses (i.e., the cost of moving the employee and his or her family and household goods from the old location to the new location). However, other expenses, such as the cost of selling and buying a home and temporary living expenses, are not deductible on the employee's tax return.

THIS BILL

The bill would establish a grant to subsidize an employee's purchase or lease of a home, if that home is located within five miles of the employer and within an LNYW area. The employer would be required to make a minimum contribution of $2,000 for each LNYW grant made to an employee of the employer for the purchase of the home ($500 in the case of an employee leasing a home). An employer could contribute more than the minimum. AN LNYW project would be a program operated by a local jurisdiction and approved by the Department of Housing and Community Development (DHCD). The local jurisdiction would apparently disburse the employer's, local jurisdiction's (minimum $2,000 for a home purchase) and DHCD's contribution (if any) to the employee.

Under the Revenue and Taxation Code (R&TC), this bill would provide a 100% credit for amounts paid or incurred by an employer for LNYW program grants pursuant to § 50899.4 (as added by this bill) of the Health and Safety Code. Under the Health and Safety Code, this bill also creates the LNYW program and fund. This analysis only discusses the part of the bill that affects the R&TC.

The Health and Safety Code contains numerous conditions that must be met by: DHCD overseeing the LNYW program, local jurisdictions operating an LNYW program, employers (or groups of employers) that contribute to an LNYW fund, and employees who benefit from the LNYW grants.

The bill would provide a 100% credit for all amounts contributed by an employer to an LNYW program. There are no other requirements in order to qualify for the credit.

This bill would allow any credit not used in a current year to be carried over to succeeding years until exhausted.

IMPLEMENTATION CONSIDERATIONS

Normally, tax credits that are associated with programs within another agency's particular expertise are certified by the agency administering the program (e.g., the natural heritage preservation tax credit is administered and certified by the Wildlife Conservation Board). The agency ensures that the taxpayer meets all of the requirements of the credit (normally, not tax related) and provides FTB a list of certified taxpayers. This allows FTB to avoid having to contact the taxpayer to substantiate the credit, particularly in situations where the credit is clearly in an area outside of the department's normal expertise. It appears DHCD would have all the information necessary, except the employer's taxpayer identification number, to certify this credit.

TECHNICAL CONSIDERATIONS

Under the R&TC, the bill allows the credit to an employer for "amounts paid or incurred." The phrase "amounts paid or incurred" relate to expenses for which one receives consideration. Under the Health and Safety Code, the employer makes "contributions" to a local tax-exempt local jurisdiction. Contributions are normally not made in exchange for "consideration" and are technically different than expenses.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

If the implementation considerations addressed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

The revenue impact for this bill will be determined by the participation rate of employers and their average grant contribution.

It is unknown in advance how many employers would participate in this program. As an order of magnitude impact, if (1) 5% of all filers reporting salaries/wages in any given year, (570,000), had employees relocating, (2) 25% (142,500) of those would be willing to commit to the program (i.e. three-year lease), (3) 10% of their employers would take advantage of this credit, and (4) the average applied credit is $1,000, the revenue loss would be $15 million in any given year.

POLICY CONCERNS

Credits generally are provided as a percentage of amounts paid or incurred. This bill would allow a 100% credit, which is unprecedented. Additionally, this bill does not specifically disallow amounts paid by an employer to a local jurisdiction as a contribution or a business deduction.

This bill does not specify a repeal date or limit the number of years for the carryover period. Credits typically are enacted with a repeal date to allow the Legislature to review their effectiveness. However, even if a repeal date were added, the department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

LEGISLATIVE STAFF CONTACT

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